No. 84-1181

Office-Supreme Court, U.S.
FILED
JAN 18 1985
ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

October Term, 1984

THE PEOPLE OF THE STATE OF NEW YORK,

Petitioner,

against

BENIGNO CLASS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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Question Presented

Whether the New York Court of Appeals erroneously construed the Fourth Amendment by holding that the actions of a police officer, who had lawfully stopped defendant's automobile for a traffic infraction and was attempting to routinely inspect the car's vehicle identification number (VIN), ordinarily viewable through the windshield, by pushing aside some papers on the dashboard which obstructed it, constituted an impermissible search of the vehicle.

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THE PEOPLE OF THE STATE OF NEW YORK,
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against

BENIGNO CLASS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

The Petitioner respectfully prays for a writ of certiorari to review the judgment of the New York Court of Appeals entered in the above-captioned case on November 27, 1984.

Opinions Below

The opinion of the New York Court of Appeals, *People v. Class,* 63 N.Y.2d 491, —— N.Y.S.2d —— (1984), is appended hereto as Appendix A. The order of affirmance without opinion and dissenting opinion of the Supreme Court of the State of New York, Appellate Division, First Department, reported at 97 A.D.2d 741, 468 N.Y.S.2d 892 (1st Dept. 1983) is appended hereto as Appendix B.

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Jurisdiction

The decision of the New York Court of Appeals was entered on November 27, 1984. This Court's jurisdiction is invoked under 27 U.S.C. § 1257 (3).

Constitutional Provisions Involved

Amendment IV of the United States Constitution provides:

> "The right of the People to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment XIV of the United States Constitution provides, in part:

> Section 1 ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law . . ."

Statement of the Case

The following statement of facts is taken from the opinion of the New York Court of Appeals. (Appendix A, pp. 1a-2a).

> On May 11, 1981, in the late afternoon, Police Officers Lawrence Meyer and William McNamee observed defendant driving 5 to 10 miles per hour above the speed limit, in a car with the windshield cracked on the passenger side. The officers drove along

side defendant's car and instructed him to pull over. Defendant followed this directive, emerged from his car and approached Officer Meyer, the driver of the police car. He provided Meyer with his registration and proof of insurance but stated that he did not have a driver's license in his possession. Meanwhile, Officer McNamee had gone directly to defendant's car, opened the door and checked the left door jamb for the vehicle identification number (VIN). Since the VIN was not located on the door jamb, McNamee reached in and moved papers on the dashboard to enable him to view the VIN. In doing so, he saw a handle of a gun protruding from underneath the seat, seized it, and defendant was promptly arrested.

The hearing court denied defendant's motion to suppress the gun. Although the court concluded that the officers had "no reason to believe the vehicle . . . was stolen" when defendant was stopped, it found their action reasonable in light of defendant's "immediately exiting the car and walking over to the police car, instead of waiting in his automobile, coupled with the fact that the defendant did not have a driver's license in his possession." Defendant then pleaded guilty to criminal possession of a weapon in the third degree and was sentenced to five years' probation. On appeal to the Appellate Division, the four Justice majority affirmed without opinion. The dissenting Justice found the search impermissible because "there was absolutely no predicate for believing the car was stolen."

The Decision of the New York Court of Appeals

In a 5 to 2 decision, the New York Court of Appeals reversed the order of the Appellate Division and ordered the suppression of the weapon and the dismissal of the indictment. In its opinion, the majority held that the officer's

conduct in opening the car door and reaching inside exposed "hidden areas" of the vehicle and, thus, constituted a search within the meaning of the Fourth Amendment. The majority concluded that a routine traffic infraction provided an insufficient predicate for that search. The dissent, however, found that there could be "no expectation of privacy" in a VIN which existed solely to "proclaim the identity of the vehicle" and, thus, its inspection was justified following a traffic infraction. The full texts of the majority and dissenting opinion appear in the appendix hereto.

REASONS FOR GRANTING THE WRIT

POINT

The decision below concerning the permissible scope of police intrusion into a vehicle's interior following a routine traffic violation raises an important and recurring question of Fourth Amendment law which this Court has never addressed.

In its decision below, the New York Court of Appeals construed the Fourth Amendment[1] as prohibiting a police

1. Although the New York Court of Appeals based its decision on the Fourth Amendment to the United States Constitution, it also purported to rely on Article I, § 12 of the New York Constitution. This oblique reference to the state constitution could not, however, constitute "an independent and adequate state ground" for the decision [*Zacchini* v. *Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 566 (1977); *Fox Film Corp.* v. *Muller*, 296 U.S. 207, 210 (1935)] and, thus, could not insulate the New York court's decision from this Court's review. *See, e.g. Texas* v. *Brown*, —— U.S. ——, 103 S. Ct. 1535, 1537 n. 1 (1983); *Michigan* v. *Long*, —— U.S. ——, 103 S. Ct. 3469, 3474 (1983); *Delaware* v. *Prouse*, 440 U.S. 648, 651-653 (1979); *Minnesota* v. *National Tea Co.*, 309 U.S. 551 (1940). Indeed, after the mere mention of the New York Constitution in the opening paragraph of its opinion, the New York Court of Appeals

(footnote continued on next page)

officer, who had validly stopped an automobile for a traffic violation, from opening the vehicle's door and reaching inside to move some papers on the dashboard which obstructed his routine inspection of the vehicle identification number (VIN) located there. While this Court has recognized that "[v]ehicle stops for traffic violations occur countless times each day . . ." [*Delaware* v. *Prouse*, 440 U.S. 648, 659 (1979)], it has never addressed the permissible scope of police intrusion into the interior of those "countless" vehicles stopped during routine traffic violations. *Accord Pennsylvania* v. *Mimms*, 434 U.S. 106 (1977); *United States* v. *Robinson*, 414 U.S. 218 (1973) (both holding that police officers may order the driver to exit his vehicle following a routine traffic violation, but leaving open the question of what actions the officer could take toward the vehicle itself).

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neither cited nor mentioned it again, but rather, extensively relied on the Fourth Amendment to the United States Constitution and opinions of both this Court [*Texas* v. *Brown*, 103 S. Ct. 1535; *United States* v. *Place*, —— U.S. ——, 103 S. Ct. 2637 (1983); *United States* v. *Chadwick*, 433 U.S. 1 (1977); *Katz* v. *United States*, 389 U.S. 347 (1967)] and the New York Court of Appeals [*People* v. *Miller*, 43 N.Y.2d 789, 402 N.Y.S.2d 392 (1977); *People* v. *Perel*, 34 N.Y.2d 462, 358 N.Y.S.2d 383 (1974); *People* v. *Sullivan*, 29 N.Y.2d 69, 323 N.Y.S.2d 945 (1971)] construing the Fourth Amendment, to reach its decision. *See Oregon* v. *Kennedy*, 456 U.S. 667 670-671 (1982) (this Court has jurisdiction to review a state court decision which relied on precedents from both this Court and the state court interpreting the federal constitution). Additionally, the lower court's concluding reference to section 401 subd. 4 of the New York Vehicle and Traffic Law, which concerns only the identification of vehicles and *not* their inspection, could not have constituted an adequate state ground for overturning the routine inspection of the vehicle, especially absent the "plain statement" to that effect, which this Court required in *Michigan* v. *Long*, 103 S. Ct. at 3476-3477. Clearly then, since the New York Court of Appeals based its decision entirely upon the Fourth Amendment, this Court has jurisdiction to review that decision.

This vacuum persists despite numerous pronouncements from this Court concerning the parameters of automobile searches in various other contexts [*e.g. Michigan* v. *Long*, —— U.S. ——, 103 S. Ct. 3469 (1983) (where the officer fears for his safety); *United States* v. *Ross*, —— U.S. ——, 102 S. Ct. 2157 (1982) (probable cause to believe the vehicle contains contraband); *New York* v. *Belton*, 453 U.S. 454 (1981) (incident to the driver's arrest); *South Dakota* v. *Opperman*, 428 U.S. 364 (1976) (inventory of the vehicle's contents)], which presumably occur with less frequency than the routine traffic infraction and accompanying VIN inspection, the legality of which remains an unresolved question. Since police officers and the courts which review their actions must confront this issue on a daily basis, this Court's resolution of it is necessary both to clarify an important question of Fourth Amendment jurisprudence and, perhaps more importantly, to guide law enforcement officials in the performance of their duty.

The importance of this issue, not only to effective law enforcement in New York, but in each of the fifty states, cannot be understated. In *Delaware* v. *Prouse*, 440 U.S. at 658, this Court recognized that

> the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed.

See United States v. *Martinez-Fuerte*, 428 U.S. 543, 560 n. 14 (1976); *United States* v. *Brignoni-Ponce*, 422 U.S. 873, 883 n. 8 (1975); *Cady* v. *Dombrowski*, 413 U.S. 433, 441 (1973); *see also California* v. *Trombetta*, —— U.S. ——, 104

S. Ct. 2528 (1984). In order to protect that "vital interest" and preserve an equally vital interest in the detection of the 119,735[2] stolen cars which plagued New York last year alone (*see Delaware* v. *Prouse*, 440 U.S. at 659 n. 18) police officers, after stopping automobiles for traffic violations, must not only inspect the driver's license and registration (*Delaware* v. *Prouse, supra*, at 659), but must also compare the information contained therein with the VIN plate, located on either the doorpost, dashboard, or motor.

Only through such an inspection process can the registration be verified, and an on-the-spot determination be made as to whether the vehicle has been stolen. This process cannot be considered a search within the meaning of the Fourth Amendment because its purpose is not the recovery of evidence, but rather, the mere inspection of a public document located in the most public, accessible areas of the vehicle. Indeed, the VIN plate owes its very existence to just such a purpose, and if police officers are to be prevented from undertaking such minimal, administrative inspections of them, then states will not only lose the ability to regulate the safety of their roads, but will be prevented from utilizing a swift and sure method of detecting stolen cars as well.

Moreover, in comparison to the critical importance of these VIN inspections, the intrusion which they engender for motorists can only be described as "*de minimis*". *See Pennsylvania* v. *Mimms*, 434 U.S. at 111; *United States* v. *Robinson*, 414 U.S. at 234. The motorist lawfully stopped for a traffic infraction has already been seized within the

2. 1983 New York State Crime and Justice Annual Report, p. 10 (Division of Criminal Justice Services 1983).

meaning of the Fourth Amendment (*Delaware* v. *Prouse*, 440 U.S. at 658) and a police officer's quick, routine inspection of the stopped vehicle's VIN plate, located on either the door, which the officer has a right to open (*see Pennsylvania* v. *Mimms*, 434 U.S. at 110-111; *United States* v. *Robinson*, 414 U.S. at 234), the dashboard, plainly visible to someone peering inside the car [*see Texas* v. *Brown*, —— U.S. ——, 103 S. Ct. 1535, 1542 (1983)] or on the motor, underneath the front hood, barely constitutes an additional intrusion. Similarly, other common areas of an automobile vital to either the safety or identification of the vehicle, *e.g.*, tailpipe, chassis, etc., should also be subject to such a routine administrative inspection following a traffic violation, in order to determine both the vehicle's proper registration and its compliance with road and safety regulations. *See, generally Michigan* v. *Tyler*, 436 U.S. 499 (1978); *United States* v. *Biswell*, 406 U.S. 311 (1972); *Camara* v. *Municipal Court*, 387 U.S. 523 (1967).

Notwithstanding the circumscribed nature and purpose of these routine roadside inspections, the New York Court of Appeals interpreted the Fourth Amendment as categorically prohibiting them. That court proscribed any intrusion into a vehicle for purposes of VIN plate inspection, no matter how minimal or circumscribed that intrusion might be. By interpreting the Fourth Amendment in this restrictive manner, the New York Court of Appeals adopted the view of a minority of jurisdictions. Indeed, most of the federal circuits and high state courts which have addressed this important and recurring issue have held that the opening of a door or engine hood for purposes of a VIN inspection does not constitute a search within the

meaning of the Fourth Amendment and is permissible within the context of a routine traffic stop [*e.g. United States* v. *Squires*, 456 F.2d 967, 969-970 (2d Cir. 1972); *United States* v. *Johnson*, 431 F.2d 441 (5th Cir. 1970) (en banc); *United States* v. *Graham*, 391 F.2d 439 (6th Cir.), *cert. denied*, 393 U.S. 941 (1968); *United States* v. *Zemke*, 457 F.2d 110 (7th Cir.), *cert. denied*, 406 U.S. 947 (1972); *United States* v. *Ware*, 457 F.2d 828 (7th Cir.), *cert. denied*, 409 U.S. 888 (1972); *United States* v. *Powless*, 546 F.2d 792, 795 (8th Cir.), *cert. denied*, 430 U.S. 910 (1977); *Cotton* v. *United States*, 371 F.2d 385, 393 (9th Cir. 1967); *People* v. *Wolf*, 60 Ill. 2d 230, 326 N.E.2d 766 (Sup. Ct. Ill.), *cert. denied*, 423 U.S. 946 (1975); *State* v. *Sedacca*, 252 Md. 207, 249 A.2d 456 (Ct. App. Md. 1969); *Commonwealth* v. *Hason*, 387 Mass. 2d 169, 439 N.E.2d 251 (Sup. Ct. Mass. 1982); *People* v. *Brooks*, 405 Mich. 225, 274 N.W.2d 430 (Sup. Ct. Mich. 1979); *Shirley* v. *Commonwealth*, 218 Va. 49, 235 S.E.2d 432 (Sup. Ct. Va. 1977)], while only a minority have held such inspections, absent either probable cause to believe the vehicle stolen, or a valid search warrant, to be violative of the Fourth Amendment. *E.g. Simpson* v. *United States*, 346 F.2d 291 (10th Cir. 1965); *State* v. *Moore*, —— Ha. ——, 659 P.2d 70 (Sup. Ct. Ha. 1983); *State* v. *Simpson*, 95 Wash. 2d 170, 622 P.2d 1199, 1207-1211 (Sup. Ct. Wash. 1980); *cf. State* v. *McGann*, —— N.H. ——, 467 A.2d 571 (Sup. Ct. N.H. 1983) (VIN inspection as violative of the New Hampshire Constitution); *see* Annot., 27 A.L.R. 4th 549 (1984) (Search and seizure: suppression of evidence found in automobile during routine check of vehicle identification number).

Therefore, in view of this conflict among the various circuits and state courts, the unresolved nature of this issue

and its grave importance to both the law enforcement community and the millions of motorists who travel the highways and roads of this country each year, a writ of certiorari should issue to resolve this vexing problem.

Conclusion

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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January 1985

APPENDICES

APPENDIX A

Opinion

NEW YORK COURT OF APPEALS

No. 520

THE PEOPLE &c.,

Respondent.

v.

BENIGNO CLASS,

Appellant.

(520) Mark C. Cogan & William E. Hellerstein, N.Y. Legal Aid, for appellant.

Mario Merola, DA, Bronx County (Roger L. Stavis & Steven R. Kartagener of counsel) for respondent.

KAYE, J.

A police officer's nonconsensual entry into an individual's automobile to determine the vehicle identification number violates the federal and state constitutions where it is based solely on a stop for a traffic infraction (U.S. Const, 4th Amdt; N.Y. Const, art I, § 12).

On May 11, 1981, in the late afternoon, Police Officers Lawrence Meyer and William McNamee observed defendant driving 5 to 10 miles per hour above the speed limit, in a car with the windshield cracked on the passenger side. The

officers drove alongside defendant's car and instructed him to pull over. Defendant followed this directive, emerged from his car and approached Officer Meyer, the driver of the police car. He provided Meyer with his registration and proof of insurance but stated that he did not have a driver's license in his possession. Meanwhile, Officer McNamee had gone directly to defendant's car, opened the door and checked the left door jamb for the vehicle identification number (VIN). Since the VIN was not located on the door jamb, McNamee reached in and moved papers on the dashboard to enable him to view the VIN. In doing so, he saw a handle of a gun protruding from underneath the seat, seized it, and defendant was promptly arrested.

The hearing court denied defendant's motion to suppress the gun. Although the court concluded that the officers had "no reason to believe the vehicle . . . was stolen" when defendant was stopped, it found their action reasonable in light of defendant's "immediately exiting the car and walking over to the police car, instead of waiting in his automobile, coupled with the fact that the defendant did not have a driver's license in his possession." Defendant then pleaded guilty to criminal possession of a weapon in the third degree and was sentenced to five years' probation. On appeal to the Appellate Division, the four-Justice majority affirmed without opinion. The dissenting Justice found the search impermissible because "there was absolutely no predicate for believing the car was stolen."

VIN inspections typically involve opening a car door to locate the VIN on the doorpost, opening the hood to locate the VIN on the engine, or looking for the hidden VIN in obscure parts of an automobile. While this court has not previously considered the legality of such inspec-

tions conducted without consent, lower courts in this state, as well as courts in other jurisdictions, have approached the question from divergent perspectives. Initially, courts are divided on the threshold issue of whether a VIN inspection constitutes a search.[1] On the facts presented by this appeal, we conclude that a search was conducted.

The Fourth Amendment "protects people from unreasonable government intrusions into their legitimate expectations of privacy" (*United States* v. *Chadwick*, 433 U.S. 1, 7; see, also, *Katz* v. *United States*, 389 U.S. 347; *People* v. *Perel*, 34 N.Y.2d 462, 466). One has no legitimate expectation of privacy in locations in a car which are observable by passerby. Accordingly, an officer's simply peering inside an automobile does not constitute a search and the Fourth Amendment consequently does not limit this activity (*Texas* v. *Brown*, —— U.S. ——, 103 S. Ct. 1535; *People* v. *Cruz*, 34 N.Y.2d 362, 370). But there are many places inside a car—including the area underneath the seats—which cannot be viewed from the outside and which an individual legitimately expects will remain private. The government intrusion here, Officer McNamee's opening the door and reaching inside, was undertaken to obtain information and it exposed these hidden areas. It therefore constituted a search (cf. *United States* v. *Place*, —— U.S. ——,

1. Compare, for example, *United States* v. *Polk* (433 F.2d 644); *United States* v. *Johnson* (413 F.2d 1396, affd. en banc 431 F.2d 441); *Cotton* v. *United States* (371 F.2d 385); *People* v. *Valoppi* (61 Mich. App. 470, 233 N.W.2d 41); and *People* v. *Hart* (75 Misc. 2d 908), with *United States* v. *Powers* (439 F.2d 373, cert. den. 402 U.S. 1011); *Simpson* v. *United States* (346 F.2d 291); *State* v. *Moore* (—— Ha ——, 569 P.2d 70); *People* v. *Piper* (101 Ill. App. 3d 296, 427 N.E.2d 1361); and *State* v. *Simpson* (95 Wash.2d 170, 622 P.2d 1199). Though not treating a VIN inspection as a search, some courts have limited the officers' right to check the VIN "to those cases in which there is a legitimate reason to do so" (see, e.g., *Cotton* v. *United States*, 371 F.2d 385, 393, *supra*). The basis for imposing this limitation is not clear.

103 S. Ct. 2637; *People* v. *Miller*, 43 N.Y.2d 789, affg., 52 A.D.2d 425, 428; *People* v. *Sullivan*, 29 N.Y.2d 69).[2]

The absence of any legitimate expectation of privacy in the VIN itself is not determinative of the issue presented. The fact that certain information must be kept, or that it may be of a public nature, does not automatically sanction police intrusion into private space in order to obtain it. In particular, the existence of a VIN on every automobile cannot enable police, without any basis, to make "wholesale entries of cars on nothing more than a hope that one of them might turn out to be stolen." (1 W. LaFave, Search and Seizure, § 2.5, p. 360.)[3]

A VIN inspection normally involves a lesser invasion of privacy than a full-blown search because of the fixed, known and readily accessible location of the VIN on the automobile. Additionally, there is a compelling police interest, in situations such as automobile thefts and accidents, in the positive identification of vehicles. Consequently, it may well be that some lesser justification than probable cause would be appropriate. However, it is unnecessary in this case to determine whether probable cause or a lesser justification should have been required to support the search, because here there was no semblance of either. The trial court based its apparent finding of reasonable suspicion to believe the car was stolen on two factors: defendant's exiting the vehicle and approaching the officers and his failure

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2. Although the gun was "protruding" from underneath the seat, Officer McNamee first observed it while conducting the search. The only question, then, is whether the officer had a right to be in the position from which he made his observation.

3. We are not confronted with a governmental intrusion so circumscribed as to expose only information or articles in which there is no legitimate expectation of privacy (compare *United States* v. *Place*, 103 S. Ct. 2637, *supra*; *Smith* v. *Maryland*, 442 U.S. 735). Nor are we concerned here with an inventory of an impounded car.

to produce a driver's license. But a driver's emergence from a car upon being stopped by police is not indicative of criminal activity. Nor was reliance properly placed by the court on defendant's failure to produce a license because McNamee, having proceeded directly to defendant's car, was not even aware of that fact when he entered the automobile. Since competing inferences cannot reasonably be drawn from the undisputed facts presented, the hearing court erred as a matter of law in finding reasonable suspicion to believe the car was stolen (see *People* v. *Harrison,* 57 N.Y.2d 470, 477). The facts reveal no reason for the officer to suspect other criminal activity or to act to protect his own safety (compare *People* v. *David L.,* 56 N.Y.2d 698, cert. den., 459 U.S. 866). The sole predicate for the officer's action here was defendant's commission of an ordinary traffic infraction, an offense which, standing alone, did not justify the search (cf. *People* v. *Marsh,* 20 N.Y.2d 98).

Some lower court cases in New York have interpreted subdivision 4 of section 401 of the Vehicle and Traffic Law as authorizing VIN inspections (see, e.g., *People* v. *Gohn,* 49 A.D.2d 585; *People* v. *Frank,* 61 Misc.2d 450; *People* v. *Goldstein,* 60 Misc.2d 745.) That section provides, in pertinent part:

> Carrying certificate of registration. Every person operating a motor vehicle or a motor vehicle and a trailer, registered or transferred in accordance with any of the provisions of this chapter, shall upon demand of any magistrate, motor vehicle inspector, peace officer, acting pursuant to his special duties, or police officer produce for inspection the certificate of registration or the registration renewal stub for such vehicle and shall furnish to such magistrate, inspector, officer or police officer any information necessary for the iden-

> tification of such vehicle and its owner, and all information required concerning his license to operate, if he is required by law to have such a license, and shall, if required, sign his name in the presence of such magistrate, inspector, peace officer or police officer as a further means of identification.

In section 401, however, the Legislature has seen fit only to authorize an officer to *demand* information necessary to identify the car, as he may *demand* the certificate of registration for the vehicle.[4] No basis has been shown for ignoring this legislative direction. Here, had the officer complied with the statute and demanded exhibition of the VIN, defendant could have avoided the intrusion on his privacy interests by simply moving the papers on the dashboard, thereby facilitating the officer's observation of the VIN through the windshield. Section 401, therefore, provided no justification for the officer's entry of defendant's car.

Accordingly, the order should be reversed, the motion to suppress granted, the conviction vacated and the indictment dismissed.

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4. No suggestion has been made that the police without basis could search the person of the driver or the interior of the vehicle to obtain a registration certificate, yet the statutory provision is no different for the VIN and the certificate of registration; in both instances the information must be provided on demand of a police officer.

JONES, J. (dissenting):

I would affirm the order of the Appellate Division which upheld Criminal Term's denial of defendant's motion to suppress the .22 calibre revolver. I do not differ with the majority's recital of the facts; I do depart, however, from the legal conclusion that it reaches.

It is undisputed that the police were warranted in stopping defendant's 1972 Dodge Charger. They had observed that it was travelling in excess of the speed limit and that it had a cracked windshield. In this circumstance they were justified not only in stopping the vehicle but thereafter in obtaining its vehicle identification number (VIN).

The requirement that each motor vehicle be assigned a VIN is for the purpose of facilitating rapid, positive identification of each particular motor vehicle. The VIN is functional only when affixed to the particular vehicle and comes into the owner's possession solely by reason of such affixation. The letters and digits constituting the VIN (as distinguished from the tab on which they may be imprinted) have no independent existence and are not susceptible of being possessed by the owner separate and apart from his possession of the vehicle or of being independently "seized" by the police.

The Supreme Court of the United States and our Court have recognized that the owner of a motor vehicle has only a diminished expectation of privacy with respect to the contents of an automobile that is being operated on the highway (*United States* v. *Chadwick*, 433 U.S. 1, 11-13; *People* v. *Belton*, 55 N.Y.2d 49, 53). With respect to a VIN affixed to a motor vehicle, however, once the vehicle is on the high-

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way the owner can have no expectation of privacy.[1] The purpose of the VIN is to proclaim the identity of the vehicle, a purpose quite inconsistent with any legitimate privacy interest of the owner.

The police on the other hand have a compelling interest, usually in the identification of a particular motor vehicle, but always in the ready availability of a near-infallible method of vehicular identification. Positive identification of a motor vehicle may be sought by them for a variety of regulatory and administrative objectives as, for example, to establish correlation with a registration certificate produced by the driver, to make positive identification of a vehicle involved in an accident, or to determine whether the vehicle has been stolen. Its identification may also be sought, of course, for purposes of recovery of a vehicle previously known to have been stolen, but in many instances when inspection of the VIN is made the police have no intimation of actual pre-existent criminal activity. Familiar concepts with respect to the necessity for probable cause to justify a search for or seizure of criminal evidence or contraband would be applicable to VIN inspection only if the objective of the police action was search for proof with respect to known or suspected pre-existing criminal activity. These concepts are immaterial and have no application where, as here, there is no evidence that such was the purpose of police inspection of the VIN, the objective of which was identification of the vehicle only, with no

1. A large number of cases have expressly held that there is no expectation of privacy in a VIN (e.g., *United States* v. *Powers*, 439 F.2d 373 [4th Cir.], cert. den., 402 U.S. 1101; *United States* v. *Polk*, 433 F.2d 644 [5th Cir.]; *United States* v. *Graham*, 391 F.2d 439 [6th Cir.], *cert. den.*, 393 U.S. 941; *United States* v. *Ware*, 457 F.2d 828 [7th Cir.]; *State* v. *Colon*, 316 A.2d 797 [Conn. Cir.]; *Commonwealth* v. *Hason*, 439 N.E.2d 251 [Mass.]; *People* v. *Brooks*, 274 N.W.2d 430 [Mich.]; *People* v. *Brewer*, 317 N.W.2d 218 [Mich. App.]; *People* v. *Valoppi*, 233 N.W.2d 41 [Mich. App.]; *Commonwealth* v. *Grabowski*, 452 A.2d 827 [Pa. Super.]).

thought of connection with known or suspected previous criminal activity. The purpose of the police was to obtain information, not to seize physical evidence.[2]

In sum, except possibly in exceptional circumstances, I would hold that whenever the police are justified in making a traffic stop (cf. *People* v. *Ingle*, 36 N.Y.2d 413) they are authorized to inspect the VIN.

After the concededly permissible traffic stop in this instance Officer McNamee opened the driver's door of the vehicle in expectation of finding the VIN on the inside panel of the door. Not finding it there he went directly to the

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2. Several courts have adopted the view that entry into a motor vehicle to find the VIN is not a search for purposes of the Fourth Amendment (e.g., *United States* v. *Forrest*, 620 F.2d 446 [5th Cir.]; *United States* v. *Duckett*, 583 F.2d 1309 [5th Cir.]; *United States* v. *Williams*, 434 F.2d 681 [5th Cir.]; *United States* v. *Polk*, 433 F.2d 644 [5th Cir.], *supra*; *United States* v. *Johnson*, 413 F.2d 1396, *affd. en banc*, 431 F.2d 441 [5th Cir.]; *United States* v. *Graham*, 391 F.2d 439 [6th Cir.], *cert. den.*, 393 U.S. 941, *supra*; *United States* v. *Ware*, 457 F.2d 828 [7th Cir.], *supra*; *Cotton* v. *United States*, 371 F.2d 385 [9th Cir.]; *State* v. *Renfrow*, 597 P.2d 546 [Ariz.]; *State* v. *Cohn*, 284 So.2d 426 [Fla. App.]; *People* v. *Brewer*, 317 N.W.2d 218 [Mich. App.], *supra*; *People* v. *Valoppi*, 233 N.W.2d 41 [Mich. App.], *supra*; *Fox* v. *Commonwealth*, 189 S.E.2d 367 [Va.]. Many courts have upheld the VIN inspection, even if it be termed a search, in circumstances amounting to less than probable cause (e.g., *United States* v. *Dadurian*, 450 F.2d 22 [1st Cir.], *cert. den.*, 405 U.S. 1044; *United States* v. *Powers*, 439 F.2d 373 [4th Cir.], *cert. den.*, 402 U.S. 1101, *supra*; *United States* v. *Duckett*, 583 F.2d 1309 [5th Cir.], *supra*; *United States* v. *Ware*, 457 F.2d 828 [7th Cir.], *supra*; *United States* v. *Powless*, 546 F.2d 792 [8th Cir.]; *United States* v. *Brown*, 535 F.2d 424 [8th Cir.]; *Cotton* v. *United States*, 371 F.2d 385 [9th Cir.], *supra*; *State* v. *Renfrow*, 597 P.2d 546 [Ariz.], *supra*; *State* v. *Colon*, 316 A.2d 797 [Conn. Cir.], *supra*; *People* v. *Wolf*, 326 N.E.2d 766 [Ill.]; *People* v. *Brewer*, 317 N.E.2d 218 [Mich. App.], *supra*; *Wood* v. *State*, 632 S.W.2d 734 [Tex. App.]; *Fox* v. *Commonwealth*, 189 S.E.2d 367 [Va.], *supra*; cf. *United States* v. *Squires*, 456 F.2d 967, 970 [2d Cir.]). Research has disclosed only six reported cases in which police inspection of a VIN has been struck down (*United States* v. *Nikrasch*, 367 F.2d 740 [7th Cir.]; *Simpson* v. *United States*, 346 F.2d 291 [10th Cir.]; *State* v. *Moore*, 659 P.2d 70 [Haw.] *People* v. *Piper*, 427 N.E.2d 1361 [Ill. App.]; *State* v. *McGann*, 467 A.2d 571 [N.H.] *State* v. *Simpson*, 622 P.2d 1199 [Wash.]).

other location where to his knowledge the VIN would be found—on top of the dashboard on the driver's side. When he observed that view of the VIN in that location was obscured by some papers, he reached inside the vehicle and moved them aside to view the VIN. That he did not first request defendant to remove the papers or seek his consent to do so is immaterial; such consent could not permissibly have been withheld. The officer was not searching for or intending to seize any physical evidence on the ground that he had probable cause to believe that a crime had been committed; he was seeking information relevant and appropriate to the traffic stop which all concede he had been authorized to make.

The right of the police to inspect the VIN affixed to a motor vehicle is to be distinguished from the right of the police to search for or to seize a vehicular registration certificate. Registration of a motor vehicle, with the related license plates, in contrast to a VIN, serves to describe a vehicle and identify its owner and constitutes proof that the vehicle has been properly licensed for operation on the highway for a specified period of time, customarily one year. In the course of its life a motor vehicle may be, and customarily is, the subject of several different registration certificates, reflecting different periods of licensing and usually successive ownership. A registration certificate may be independently possessed by its owner, on his person, in the glove compartment of the vehicle, or otherwise. Without probable cause the police would have no right to search the person of the driver or the interior of the vehicle to obtain a registration certificate. Penalties might attach to the failure of the driver to produce the registration certificate, but that fact would not enlarge the right of the

police to search. The VIN, however, is intended to be indelibly affixed to the particular vehicle throughout its existence, irrespective of changing ownership of the vehicle and whether or not it is licensed for operation on the highway. As its name states, its purpose is vehicle registration without reference to ownership or licensure for operations.[3]

Inasmuch as in this instance the police had the right to inspect the VIN of the 1972 Dodge[4] and the revolver was observed inadvertently and without intention to search for it, under the plain view doctrine it should not be suppressed (see *Texas* v. *Brown*, —— U.S.——, 103 S. Ct. 1535).

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Order reversed, motion to suppress granted, conviction vacated and indictment dismissed. Opinion by Judge Kaye in which Chief Judge Cooke and Judges Wachtler, Meyer and Simons concur. Judge Jones dissents and votes to affirm in an opinion in which Judge Jasen concurs.

Decided November 27, 1984

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3. The right to inspect the VIN would not, of course, justify a rummaging search of a motor vehicle. The officer would be warranted only in going directly, as he did in this case, to a location where by the officer's advance knowledge the VIN was to be found. By like token, a pretext search would not be condoned.

4. I would reach this result without reference to the provisions of Vehicle and Traffic Law, § 401(4).

APPENDIX B

10 THE PEOPLE OF THE STATE OF NEW YORK, Respondent, v. BENIGNO CLASS, Appellant.—Judgment, Supreme Court, Bronx County (Murray Koenig, J.), rendered on December 10, 1981, affirmed. Concur—Asch, Silverman, Bloom and Kassal, JJ.

Carro, J. P., dissents in a memorandum as follows: Defendant was stopped for driving 5 to 10 miles above the speed limit and because the windshield on the passenger side was badly cracked. When the officers (who were not in uniform and drove an unmarked patrol car) pulled up next to him, flashed a badge and ordered him to pull over, he did so. Mr. Class got out of the car and walked back to the officers, who had also alighted. One officer asked him for his license and registration, while the other officer went over to the car. Defendant produced an insurance card and the registration, but had no license to show. As defendant and the first officer discussed this, the second officer opened the car door on the driver's side, allegedly to check the Vehicle Identification Number (VIN). There was no VIN on the car door, so the officer (testified that he) checked the dashboard, but it was obstructed by "something", which he pushed away. As he did that he saw what appeared to be the "handle of a gun sticking out from the driver's seat underneath." A .22 calibre pistol was recovered, Mr. Class was arrested and in the ensuing search of defendant, ammunition was recovered. Summonses were also issued for unlicensed operation of a motor vehicle and driving with a broken windshield. The above recitation of the facts is a distillation of the two officers' testimony, which the suppression court accepted. The officers also testified that

they had no basis for believing the car to be stolen, the registration papers later checked out as valid (no radio run was made on the car at any time) and the VIN was never even copied down by the officer who allegedly searched for it. The court below denied defendant's suppression motion by ruling that the gun had been "in plain view" when seized. The court found the initial search for the VIN to be justified, "notwithstanding any lack of probable cause to believe the car had been stolen," because "the defendant's conduct, that is, immediately exiting the car and walking over to the police car, instead of waiting in his automobile, coupled with the fact that the defendant did not have a driver's license in his possession, made these officer's actions quite reasonable and prudent under the circumstances." Such reasoning bends both logic and the law, the latter in violation of the constitutional prohibition against unreasonable searches and seizures. (U.S. Const., 4th Amdt.) This incident occurred about 4:30 in the afternoon, on a sunny day, right before the onset of rush hour. There was not the slightest hint in the officer's testimony that this was a high crime area or that they were on any more than "routine patrol." The conclusion that defendant's act, of getting out of his car and going to the officers rather than awaiting their approach, constituted suspicious behavior, is absurd. I would do the same thing myself, if for no other reason than the recent tragedies of officers being fired upon as they approach stopped drivers might reasonably create an apprehension that would be dispelled by my exhibiting myself as clearly unarmed. The court's second point is even more illogical since, by the officer's own testimony, the search of the car by one officer began before the other had yet discovered that defendant was not

a licensed driver. Since the search was conducted without any indication of impropriety or preliminary radio run on the license plate, the police action was no more than a wrongful trespass, and the plain view doctrine is inapplicable. (*Coolidge* v. *New Hampshire*, 403 U.S. 443, 466, 472.) As the Court of Appeals stated many years ago, "[t]here is no question, and the entire court agrees, that a police officer is not authorized to conduct a search every time he stops a motorist for speeding or some other ordinary traffic infraction." (*People* v. *Marsh*, 20 N.Y.2d 98, 100 [per Fuld, Ch. J.], as affd. in *People* v. *Howell*, 49 N.Y.2d 778, 779.) And while the alleged premise here—to search for the VIN—was less intrusive than a full-blown inventory, it still constituted an impermissible search since there was absolutely no predicate for believing the car was stolen. (*Cotton* v. *United States*, 371 F.2d 385, 393-394; *People* v. *Gohn*, 49 A.D.2d 585.) Nor was there any lawful arrest to which the search was incident. (*People* v. *Erwin*, 42 N.Y.2d 1064, 1065.) Since the officer had no right to be in the car, his observation of the gun handle may not be sanctioned by the plain view doctrine. (*Coolidge* v. *New Hampshire*, *supra*; *People* v. *Gohn*, *supra*.)